IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1774 OF 2004

Shri Kantaprasad Jeetbahadur Singh ...Petitioner

Versus

State of Maharashtra & Ors. ...Respondents

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Mr.S.P.Kanuga with Ms.S.N.Nath for Petitioner.

Mr.B.H.Mehta, A.P.P. for Respondents.

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CORAM: A.M.KHANWILKAR, J.

SEPTEMBER 8, 2004.

P.C.

1. Heard Counsel for the parties.

2. Rule. Mr.Mehta, A.P.P. waives notice for Respondents. Rule made returnable forthwith, by consent.

3. As short question is involved, the matter is heard for final disposal forthwith, by consent.

4. This Writ Petition takes exception to the

decision of the State Minister (Home/Rural) dated August 2, 2004 in Appeal No.KEH 01/2003/706/VS5. The Petitioner had applied for performance licence, which application was rejected by the Deputy Commissioner of Police, recording at least eight grounds as are noted in the impugned order. That order was however, passed by the Deputy Commissioner ex-parte. In the circumstances, Petitioner carried the matter in appeal. The Appellate Authority, namely, the State Minister has confirmed the order passed by the Deputy Commissioner of Police rejecting the Petitioner's application; however, has discussed only two grounds for dismissing the appeal preferred by the Petitioner, as can be discerned from Paragraph 7 of the impugned decision. The first ground stated against the Petitioner is non-production of plan of the premises in terms of Section 108 of the Act and secondly, that the Petitioner was not proper person to give licence for the premises and playing orchestra. Counsel for the Petitioner assailed the correctness of both the grounds. The learned A.P.P., however, supported the decision of the Appellate Authority, which in turn, confirmed the

view taken by the Deputy Commissioner of Police and has adopted the other grounds, which had weighed with the Deputy Commissioner. However, as mentioned earlier, the Appellate Authority has not considered the correctness of the other grounds which weighed with the Deputy Commissioner and chose to dismiss the appeal preferred by the Petitioner only on two grounds.

5. Instead of examining the correctness of the grounds that had weighed with the Deputy Commissioner of Police, in exercise of writ jurisdiction, the appropriate course, to my mind, is to set-aside the impugned decision of the State Minister and relegate the parties for re-examination of the Appeal on its own merits in accordance with law.

6. All questions in the appeal will be decided afresh by the Appellate Authority after giving opportunity to the Petitioner and the concerned party. The appeal as was filed by the Petitioner, which is restored by this order, shall be decided by the Appellate Authority as

expeditiously as possible, preferably within six weeks from today.

7. It is made clear that inspite of coming into force of election code of conduct, the Appellate Authority will proceed to decide the appeal as directed by this order, which is in discharge of its statutory duty. In case, the concerned Minister is unavailable for the hearing of the appeal, the appropriate Authority will delegate the power of hearing of the appeal to the Principal Secretary of the Home Department, so as to ensure that the appeal is finally disposed of within the specified period referred to above.

8. Petition disposed of on the above terms.

A.M.KHANWILKAR, J.